IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.900 OF 2003

Shabir Ali @ Shabur Ali @ Mama Umed Ali
Adult, Occ.: Tailor, Having address at Sonam Garment, D-2, Janata Stores, Modi Compound Near Masjid, Cross Road No.1, Mumbai-400 010. ..Appellant (Org.Accused)

Versus

The State of Maharashtra (At the instance of Vakola Police Station, Mumbai. ..Respondent

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Mr.Niranjan Mundargi for the appellant.

Mr.K.V.Saste APP for the State.

Coram : B.H.Marlapalle & R.S.Mohite,JJ

Date : 7th February,2007

Judgment :- (Per : R.S.Mohite,J)

1. This is an appeal filed by the appellant Shabir Alli @ Shabur Ali @ Mama Umed Alli (hereinafter referred to as the "accused") impugning a judgment and order passed by the Additional Sessions Judge, Gr.Mumbai on 13.6.2001 in Sessions Case No.541 of 1991. By the impugned judgment and order the accused has been convicted for an offence punishable under Section 302 of IPC and has been sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/-, in default to suffer R.I.

for one year.

2. The brief facts of the prosecution case were as under :-

(a) The accused Shabir was the nephew of Nurul Huda Mir Gulam Kibria (PW 8) who was his uncle. About 3 months prior to the incident, Nurul Kibria had married the deceased Rahida and alongwith his wife and the accused he was residing as a tenant in room no.238/1/6 situated at 1st floor, Navratna Chawl, 6 Golibar road, Santacruz (East), Mumbai. The said room was owned by the first informant (PW 5) Mrs.Vijaya Yashwant Rane.

(b) The incident in question took place at about 4.00 P.M. on 10.3.1991. On that day (PW 8) Nurul Kibria, his wife Rahida and the accused were at home. As per the evidence of (PW 8) Nurul Kibria the accused had been staying with him since the year 1990 i.e. prior to his marriage. Nurul Kibria (PW 8) was a tailor and initially he was working with another tailor at Bandra but 15 days prior to the incident he has commenced his business from his room. The accused used to assist him but he was not doing his work deligently. There used to be quarrels between accused and deceased Rahida on some occasions. In the night time, accused used to sleep in a factory situated in that area.

(c) In the afternoon of the date of the incident, one person by name Hasan had come to (PW 8) Nurul Kibria for alteration of his pant. Accused was sent alongwith Hasan to bring buttons. The accused returned back after an hour. Nurul Kibria, deceased and the accused had lunch in the afternoon. After lunch, Nurul Kibria gave Rs.50/- to the accused to bring a packet of cigarette. Accused returned back saying that nobody was giving him change of Rs.50/-. Hence Nurul Kibria asked him to bring one razor blade of Supermax company alongwith the packet of cigarettes. Accordingly accused brought the razor blade and the packet of cigarettes. At about 3.00 P.M., when the accused was resting in the house, Nurul Kibria went to visit a friend staying at Sion. While leaving, he saw that his wife was chit-chating with one lady staying on the ground floor. He informed her that he was leaving and would be returning back at about 8.00 P.M.

(d) Thereafter at about 3.30 P.M. another tailor by name Shashikant Parave (PW 3) visited the house of Nurul and called out his name from the ground floor. In response to his call, the accused came out and told him that Nurul was not available. He climbed 2 steps of the ladder but the accused came near the ladder and collected hooks brought by this

witness and asked him whether he needed the pant urgently. The witness informed the accused that it will be alright if the pant was delivered subsequently. This witness saw one lady by name Sushila who was standing on the ground floor. He then left the place.

(e) A little later at about 4.00 P.M. (PW 5) Mrs.Vijaya Rane who worked as a maid-servant returned to her room situated on the ground floor. She heard somebody calling out for Nurul but there was no response. At about 5.00 P.M. she found the front door of Nurul's room open. She talked to her neighbour Sushila and Sushila told her that she had seen the deceased Rahida at 3.00 P.M. but not thereafter. (PW 5) Mrs.Vijaya Rane then climbed up and noticed Rahida lying in a pool of blood. She found that Rahida had a cut injury on her neck. She informed this fact to the neighbour and thereafter went to Vakola Police station to lodge a complaint.

(f) At the Vakola police station, she met (PW 9) PI Suresh Jadhav. As per the narration of (PW 5) Mrs.Vijaya Rane, PI Suresh Jadhav directed the recording of her FIR. The said FIR was recorded at about 7.00 P.M. by SHO Shinde under the direction of (PW 9) PI Suresh Jadhav. PI Suresh Jadhav then went to the spot alongwith PSI Shinde and police

staff after making necessary station diary entry. He noticed the dead body of Rahida lying in a pool of blood on the 1st floor of the building. He called 2 panchas and drew the spot and inquest panchanamas. He collected blood samples, blood mixed earth, mats & loongi from the scene of the offence. He sent the dead body for post mortem to Coopar Hospital. Later, he collected post mortem notes. On the same day, he recorded statements of Sushila, Kisan, Shakuntala, Rajendra & Mir Nural. He also recorded the statement of a photographer and later, on the same day, he arrested the accused under a panchanama. The said panchanama which is at (Exh.21) was drawn at 8.20 P.M. While in police custody, Investigating officer seized the clothes on the person of the accused. These clothes were a shirt and pant (articles-8 & 9). He found that the clothes were stained with blood. He also found injuries on the dorsal part of the left palm of the accused and thus he sent the accused for medical examination at V.N.Desai hospital. The accused was examined at V.N.Desai hospital and Dr.Dushyant Harkishandas issued a medical certificate. On the same day accused made a voluntary statement in the presence of 2 panchas which according to the prosecution led to the discovery of a razor blade. The razor blade was discovered from the slit in the kitchen of the room of Nurul was found to have blood stains and the same was seized under a

panchanama (Exh.12). The investigating officer then sent the accused for determination of blood group at Nagpada hospital. He obtained C.A.report in respect of the articles which were seized and forwarded to the C.A. The clothes of the deceased were seized under the panchanama (Exh.18). These clothes, taken from the body of the deceased were produced at the trial at articles-4, 5, & 6. After completion of investigation, the investigating officer filed a charge-sheet.

3. In due course, the matter was committed to the Court of Sessions and a charge under Section 302 of IPC was came to be framed against the accused.

4. In order to prove its case the prosecution examined as many as 9 witnesses. Of these, (PW 3) Shashikant Parave, (PW 5) Mrs.Vijaya Rane and (PW 8) Nurul Kibria were examined to prove the presence of the accused at the spot of the incident, just prior to the time when the incident took place. (PW 1) Dr.Dushyant Harkishandas and (PW 7) Dr.Dilip Waje were the 2 doctors who were examined to prove the injuries on the person of the accused. Another doctor (PW 6) Vasant Vanmore was examined to prove the post mortem notes. The injuries suffered by the deceased brought on record by the prosecution by production of the post mortem notes and through the evidence of the doctor were as under :-

a) I.W.over neck below thyroid cardilage 7 cm long and 2.5 cm width, up to bone deep (2 cm deep)

b) Brusing below chin 2 cm x 1.5 cm size.

c) Three aberations over neck. 2.5 cm x 0.2 cm size two just above the major injury and one at Lt.angle of mandible.

The Doctor opined that the cause of death was "Shock and haemorrhage due to injuries to vital organs (Un-natural)".

5. The defence chose not to examine any defence witness. From the 313 statement, however, it is clear that the defence of the accused was of total denial. His case was that he had left the house where incident took place at 2.00 P.M. and had returned back to the said house at 7.30 P.M. He however, admitted that the shirt and pant worn by him were seized by the police at the time of his arrest. Rest of his statement consists of total denial of the various circumstances adduced by the prosecution against him.

6. Taking into account the oral and documentary evidence adduced by the prosecution and the other material on record, the trial Court convicted and sentenced the accused as aforesaid and that is how

the present appeal came to be filed by the accused.

7. On behalf of the accused, it was firstly contended that the matter deserves to be remanded back to the trial Court because the Advocate of the accused had remained absent during the examination and cross-examination of (PW 3) Shashikant Parave to (PW 7) Dr.Dilip Waje. He has also filed interim application being Criminal Application No.1199/2006 with a specific prayer that the case be remitted back to the Court of Sessions to re-call (PW 3) to (PW 7) and to enable the accused to cross-examine these witnesses. We have given anxious consideration to this prayer and we feel that even excluding the evidence of these five witnesses, there is sufficient material on record to convict the present accused and that no purpose would be served by remanding the matter back. The nature of this evidence will be dealt by us shortly. The Advocate for the defence then contended that this was a case of circumstantial evidence. The prosecution had failed to prove the circumstances and even the circumstances which were proved were not enough to form a complete chain so as to rule out every other possible hypothesis except the guilt of the accused. He further contended that this Court should not accept the fact that the cut injury on the neck of the deceased could be caused by article-1 which was an ordinary razor blade. He

contended that injury of such nature and depth could not be inflicted by an ordinary razor blade.

8. On behalf of the State, it was contended that no case was made out for remand. Accused was given sufficient opportunity and his Advocate has cross-examined the 4 main witnesses i.e. (PW 1) Dr.Dushyant Harkishandas, (PW 2) Babu Kumar, (PW 8) Nurul Kibria and (PW 9) Suresh Jadhav. The accused had also attempted to cross-examine in person the other witnesses. He supported the reasoning given by the trial Court. It was contended that there could be no manner of doubt that the death of Rahida was homicidal. The accused has last been seen together at the spot of the incident. He had motive to commit the incident as the deceased Rahida being the newly wedded wife who had just come to reside in the premises used to frequently quarrel with the accused and the evidence indicated that accused was required to sleep outside the room. Even the accused had admitted that his clothes were seized by the police at the time of arrest. C.A's report indicated that these clothes i.e. shirt and pant of the accused had several human blood stains and that the blood stains on the shirt were of 'B' group, whereas the blood group of the accused was of 'O'. He pointed out that the prosecution had proved the discovery of the razor blade at the behest of the accused and even this

razor blade was found to contain blood stains of ‘B’ group which was the blood group of the deceased as found on the clothes of the deceased. It was pointed out that the injuries on the accused also indicated that the accused was involved in a scuffle. That the accused had admitted injuries on his person and in any case this was proved by examining the two doctors who had examined the accused. He pointed out that there was no explanation coming forward from the accused as regards the injuries suffered by him. He contended that this was a fit case for upholding the conviction and sentence and prayed that the appeal be dismissed.

5. Having heard both sides and having perused the record, we are of the view that there is no substance in the appeal and the same requires to be dismissed for following reasons :-

(A) Firstly the evidence of (PW 8) Nurul Kibria clearly indicates that there used to be quarrel between the deceased and the present accused. The facts indicate that the accused had been staying with Nurul in his house since 1990 i.e. prior to the marriage of Nurul with Rahida. He expressed his dis-satisfication with the work of the present accused and states in his evidence that the accused was not working intelligently. He states that his

newly wedded wife used to quarrel with the accused. It is clear that the presence of the newly wedded deceased Rahida in the house of Nurul and accused created tension and therefore, the version given by the Nurul as to the quarrel can clearly constitute the motive.

(B) The 2nd circumstance is regarding the accused being present at the scene of the offence immediately prior to the commission of the offence. (PW 8) Nurul Kibria states that he left the deceased in the company of the accused at 3.00 P.M. on the date of the incident. Nurul has been cross-examined through the Advocate of the accused but his evidence in the aforesaid regard has not been shaken in any aspect. (PW 3) Shashikant Parave then saw the accused at 3.30 P.M. which indicates that the accused was present at the scene of the offence at that time. There is nothing adduced in the cross-examination of (PW 3) Shashikant Parave to shake his evidence. (PW 5) Mrs.Vijaya Rane then found the deceased lying in a pool of blood at 5.00 P.M. This indicates that the offence in question took place between 3.30 P.M. and 5.00 P.M. on 10.3.1991. The presence of the accused at the scene immediately prior to the occurance of the incident is therefore, the next circumstance proved by the prosecution.

(C) At this stage it may be stated that the 3rd circumstance flows from the 2nd circumstance and this is a false defence taken by the accused to the effect that he has left the premises at 2.00 P.M. Once the evidence of (PW 3) Shashikant Parave and (PW 8) Nurul Kibria was found to be acceptable then the false defence of the accused is yet another circumstance, which when linked with various other circumstances, helps to form a complete chain.

(D) Fourthly according to the prosecution, the shirt and pant of the accused were seized by the police immediately on the same day when the accused was arrested. This seizure was admitted by the accused in his 313 statement. C.A.report clearly indicates that both, his shirt and pant were stained with human blood. The blood on the shirt was further determined of ‘B’ group which was the blood group of the deceased. C.A’s report further indicates that the blood group of the present accused was determined to be of ‘O’ group. This is a clinching circumstance against the accused.

(E) The prosecution has further established recovery of a razor blade at the behest of the present accused. This discovery has been proved by the prosecution through the evidence of (PW 2) Babu Kumar who was cross-examined by the Advocate for the accused. His evidence was not being shaken.

The said razor blade has been found to have blood stains of ‘B’ group which is the blood group of the deceased and therefore, this is yet another circumstance proved against the accused.

(F) Finally the injuries suffered by the accused as found by Doctor were admitted by the accused. Surprisingly, the accused had denied these very injuries which were also found by Dr.Dushyant Harkishandas. Be that as it may, by examining the 2 doctors the existence of injuries on the palm of the accused has clearly been established. Doctors have stated that these were cut injuries which were possible by a razor blade such as article-1 which is said to be the weapon of assault.

6. Taking into consideration the aforesaid circumstances, we have no hesitation in up-holding the judgment and order of the trial Court and confirming the conviction and sentence as we find that the prosecution has proved the aforesaid circumstances which have been linked to form a complete chain which establishes the guilt of the accused. We find that proving of such circumstances rules out any other hypothesis except the guilt of the accused.

7. In the net result, the appeal is dismissed and the conviction and sentence passed by the impugned

judgment and order is confirmed.

8. For the reasons which are mentioned in the judgment, Criminal Application No.1199/2006 for remanding the matter back, also stands dismissed.

9. Appeal and application stand disposed off accordingly.

(R.S.Mohite,J) **(B.H.Marlapalle,J)**